

Remarks

Claims 1-3 and 7-18 currently appear in this application. The Office Action of February 14, 2008, has been carefully studied. These claims define novel and unobvious subject matter under Sections 102 and 103 of 35 U.S.C., and therefore should be allowed. Applicant respectfully requests favorable reconsideration, entry of the present amendment, and formal allowance of the claims.

Rejections under 35 U.S.C. 112

Claims 1-3 and 16-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

This rejection is respectfully traversed.

Claim 1 has been amended so as to overcome the Examiner's rejection of the claim under 35 USC 112, 1st new matter.

In this respect, the mass ratio of protein has been changed to 0.05% (in the place of the erroneous ratio 0.005%) and the mass ratio of lysine has been changed to 0.2% (in the place of the erroneous ratio 0.2%). This amended claim states also that the extract comprises also methionine (between 0.04 to 0.6% m/m) so that the general composition of the recited extract correspond exactly to the general composition provided page 5 line 25 to 28 of the applicant's specification.

Art Rejections

Claims 1-34 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anchevskii et al., RU 2182829 in view of Li, *Hydrobiologia* 438:99-105, 2000 and further in view of Patterson et al., US 5,439,933 as evidenced by Shelest et al., "Feed Hydrolysate from blue-green algae," *Svinovodstvo*, Moscow, 10:28-29, 1983 and Baudoin et al., FR 2796556.

This rejection is respectfully traversed.

In Fact Anchevskii et al as well as Patterson et al disclose the use of blue-green algae respectively in the field of cosmetology and in topical applications for antifungal activity. More particularly Patterson et al provides new scytophyecin compounds which can be used as antineoplastic agents, antibiotic, antifungal agents and as useful agent for cellular research. These compounds are isolated from blue-green algae (cyanobacteria of the genus *Scytonema*, in particular by culturing new strains of *Scytonema ocellatum*, or *Scytonema burmanicum* or variant thereof. Anchevskii et al proposes compositions containing a therapeutically effective amount of at least one new Scytophycin compound including the nontoxic addition salts thereof (column 8, line 11 to 14). This is not contradictory with the fact that a fraction of the compound produced by algae could be toxic.

In this respect Li reports that natural samples and cultured strains of *Aph. flosaquae* produce neurotoxins including paralytic shellfish poisons (neo-saxitoxin and saxitoxins) (Sawyer et al, 1968; Alam et al, 1978, Ikawa et al, 1982, Mamhood & Carmichael, 1986) and anatoxin-a (Rapala et al, 1993)...; while it may be possible to establish a new species for strain NH-5 we prefer to designate it as *Aph. Sp* and await further taxonomic investigation plus comparison with other reported toxin producing strains of *Aph. Flos aquae* (Rapala et al, 1993; Pack et al, 1997).

Li states that strain K-2 from Klamath lake, Oregon is *Aph. Flos aquae* and is harvested and used as health food supplement. This means that in contrast with the other variety, this species is not toxic. This document also reveals that generic differences between the various species of aphanizomenon are still unclear.

For this reason the teaching of Patterson and Anchevskii which concerns species of algae very different from *Aph. flos aquae* cannot be combined obviously with the teaching of Li (which reveals differences between the different species of aphanizomenon) and a toxicity of a great number thereof.

Shelest discloses Feed hydrolysate from blue-green algae comprising protein, lysine, arginine, aspartic acid,

threonine, serine, glutamic acid, proline, glycine, alanine, valine, isoleucine, leucine, tyrosine and phenylalanine. However, this compound is not generated from the same species as the applicant's one and does not correspond to the claimed composition in spite of the fact that it comprises protein, lysine, proline and serine. This document does not concern any cosmetic purpose.

Baudouin concerns a combination of fibrillin and of an extract of Cyanophyceae. This document is subjected to the same remarks as above.

Claims 1-3, 7 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anchevskii in view of Li and Zecchino et al., US 5,008,100 and further in view of Patterson and Grollier, US 4,804,531 as evidenced by Shelest and Baudoin.

This rejection is respectfully traversed.

Feoktistova discloses a study about blue-green algae (*Anabaena spiroides*, *Aphanizomenon flos aquae*, *Coelo-sphaerium dubium*) and their synthesis of vitamin B₁₂. This document does not concern the species *Aphanizomenon flos aquae* var *flos aquae* and is subjected to the same remarks as above.

For the reasons given above reconsideration of the final rejection is respectfully requested with the allowance

of the amended claims 1 with the depending claims 3, and 16-18.

It is respectfully submitted that no new issues are raised for consideration, as the amounts of ingredients in claim 1 have been corrected to conform to the specification as filed.

Respectfully submitted,

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